IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1341 OF 2004

Vithu Tuka Chougule .. Appellant

Versus

Pandu Tuka Chougule & Ors. .. Respodents

Mr.Ravindra Pawar h/f Sarang S.Aradhye for appellant

Mr.S.M.Kamble for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 5TH JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by District Judge, Kolhapur dated 15.3.2004 dismissing the appeal and confirming the judgment and order passed by Joint Civil Judge, Junior Division, Kolhapur decreeing the suit for

partition and separate possession of respective shares of the parties.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs had filed the suit for partition on the ground that the properties were ancestral properties and the defendant no.1 claimed that the part of the properties were his self acquired, which gave rise to the dispute and hence the suit came to be filed. The defendants resisted the suit on the ground that part of the property was his self acquired property and defendant no.1 by virtue of Certificate under Sec. 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 issued in his favour.

. The learned trial judge adjudicated the dispute on merits came to the conclusion that the plaintiffs had proved that the suit properties mentioned in paras of the plaint 1-a and 1-b were joint family properties. It was also held that the defendants failed to prove that there was already partitions effected in the year 1960 and plaintiff no.1 had separated from the family in the

year 1970 and having got his share from the suit ancestral properties. Further it was held that the land of Gat Nos.1142, 1160 and 1162 were proved to be self acquired property of the defendant no.1 and as such the suit came to be decreed for partition. The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both the parties and on the basis of available evidence confirmed the findings recorded by the learned trial judge and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The only submission put forth on behalf of the appellant was to the effect that three lands viz. Gat No.1142, 1160 and 1162 were given to deceased Nivriti's share and Certificated under Sec.32-M of the Act came to be issued in favour of the defendant no.1. However, both the courts below on the basis of the evidence, have come to the conclusion that merely because the said Certificate was in the name of defendant no.1 Bandu Chougule, does not mean that the defendant no.1 was only owner of these lands, especially the record of rights show that the plaintiffs as well as

the defendants, as the persons in possession of the said property vide Exh.98, 101 and 102. It was also noted that the defendant no.1 never complained about those entries while the record of rights were effected to his knowledge, and on the basis of documentary evidence the courts below have held that the suit properties were ancestral properties and those are liable to be partitioned. It was urged on behalf of the appellants that the enquiry made by the Revenue Authorities was conclusive on which basis Certificate under Sec.32M was issued and hence it must be held that those properties were self acquired properties of the defendant no.1. However, as noted earlier, there is absolutely no evidence on record to suggest that those properties were self acquired properties of defendant no.1 only because Certificate under Sec.32M of the Act was issued especially when the defendant no.1 was Karta of family.

. In these factual matrix, considering the evidence on record both the courts below have rightly come to the conclusion that the suit deserves to be decreed. There is no case made out for intervention of the findings recorded by both the courts below and hence the appeal stands dismissed.

.